



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

of the legislature in such emergency could be deserving of the praise bestowed upon it by the minority, but rather is the Constitution "the most wonderful work ever struck off at any given time by the brain and purpose of man" when under its beneficent protection it is the law that hundreds of thousands of families may not be unsheltered by those hiring out one of the basic and primal necessities of life.

J. J. P.

CONSTITUTIONAL LAW: MUNICIPAL ORDINANCE PROHIBITING
DANCING BETWEEN CERTAIN HOURS AS A VIOLATION OF PERSONAL
RIGHTS—

*Said mamma to the Crown City queen,
"Why, my dear, where on earth have you been?"
She replied, turning pale,
"We've all been in jail
For dancing 'till ten-seventeen."*

The above might have become a common occurrence in the city of Pasadena, if the sedulous reformers of that metropolis had had their way about it—for an ordinance was recently passed therein, which is perhaps the deepest indigo of any blue law ever constructed, being designed for every day as well as Sunday use. This is it: "Between the hours of 10 o'clock p. m. and 8 o'clock of the next succeeding day, it shall be unlawful for any person, firm or corporation in control of any room or hall, any portion of which or any window of which is within twenty-five feet of any portion of any building used as the residence of any person other than the person in control of such room or hall, to conduct dancing or the performance of dance music in such room or hall."¹ A fine of \$500 or six months imprisonment or both awaited the violator.

in New York City. I am informed by the President of the Board of Justices in the Municipal Court that there are pending for October 1 more notices of dispossession proceedings than were filed during the whole year of 1919—approximately 100,000. The courtrooms have been crowded beyond their capacity by tenants seeking relief. These figures of themselves cannot communicate the harassing uncertainty and misery caused by the constant repetition of these proceedings. It has been publicly stated by the Health Commissioner of the City of New York that this condition of uncertainty is alone a direct menace to the health and welfare of the community. The housing shortage leaves the citizen nowhere to turn. Families have been broken up and dispersed generally throughout the city, or crowded and huddled into the homes of relatives, until the health, welfare and morality of the community is seriously threatened.

"This is the time for action. We are confronted with a real problem of reconstruction. Shall we remain in the dark ages of inadequate and un-American housing, endangering the health and morals of future generations of our citizenship? Or shall we go forward with the times, and enter the new era of democracy with an enlightened interest in the fundamental needs of our cities and our citizenship for well-planned communities that serve the industrial, commercial and social needs of the people, and homes that make for a stabilized, self-respecting, wholesome family life?"

¹ See the principal case, *infra*, n. 9.

It is believed that the above law is unique. While the regulation of public dance-halls has long been considered a legitimate and proper subject of police regulation,² although there have been declared limits even here,³ and while loud or boisterous dancing may be restrained⁴ and in some cases may be held to constitute a nuisance,⁵ this is the first time that an appellate court has had to consider an edict which purported to invade the sanctity of the home and clamp down the lid on the family piano, or command the hostess to compel her dancing guests to disengage promptly at ten o'clock and forthwith go home or take up bridge or some other less clamorous diversion.

The police power is unquestionably essential to effective government; but the temper of the American people requires that it be kept within certain limits.⁶ The courts have endeavored to steer a course between giving the sovereign will a power of officious interference with the personal liberties of the citizen, and denuding it to a useless impotence. The scope of judicial inquiry into police legislation is limited to the question of power, leaving with the legislature the matter of policy or expediency.⁷ But a law, especially a municipal ordinance, that transcends reasonableness and absolutely prohibits harmless amusements or businesses when a proper regulation would obviously suffice to remedy the evil at which the statute is directed, brings itself within the field of judicial review, even though the law may have some relation to the result it seeks to achieve.⁸

Is the statute above quoted valid even if inexpedient, or is it void, because unreasonable? Mr. Justice Finlayson, discussing it in the case of *Ex parte Hall*⁹ can see but one answer. "On with

² For example, *State v. Rosenfield* (1910) 111 Minn. 301, 126 N. W. 1068, 137 Am. St. Rep. 557, 29 L. R. A. (N. S.) 331, forbidding minors to enter public dance halls. See Freund on the Police Power, § 250; and notes in Ann. Cas. 1915C 1110, L. R. A. 1917A 1174 and L. R. A. 1916D 99.

³ *City of Chicago v. Drake Hotel Co.* (1916) 274 Ill. 408, 113 N. E. 718, L. R. A. 1917A 1170, which held that power could not be conferred upon a municipal corporation to prohibit permitting patrons of a public restaurant to dance without extra charge while the place is open for the purchase of refreshments.

⁴ *Feeney v. Bartoldo* (1895) 30 Atl. 1101 (N. J. Eq.) where an injunction was obtained against a saloon operating its piano after 9 p. m.

⁵ *Commonwealth v. Cincinnati N. O. & T. R. Co.* (1908) 33 Ky. L. Rep. 1056, 112 S. W. 613, where the corporate owner of a tract of land was held criminally liable for maintaining a nuisance when boisterous dancing and drinking took place thereon. See note, 18 L. R. A. (N. S.) 699, on dancing as a nuisance. As to what amusements may be declared nuisances *per se*, 31 L. R. A. (N. S.) 548, note; and for amusements that may be regulated under the police power, see L. R. A. 1917E 318, note.

⁶ See generally, Charles Bufford, *The Scope and Meaning of Police Power*, 4 California Law Review, 269.

⁷ For an illustrative case, see *Chicago B. & Q. R. Co. v. McGuire* (1910) 219 U. S. 549, 569, 55 L. Ed. 328, 31 Sup. Ct. Rep. 259.

⁸ See Freund on the Police Power, § 158, and cases therein cited.

⁹ (Dec. 31, 1920) 34 Cal. App. Dec. 218, 195 Pac. 975.

the dance" is the result—"let joy be unconfined" to any such arbitrary limits. "From time immemorial," says the opinion, "it has been customary in all free countries and in most civilized lands for people to enjoy themselves in their homes by dancing and listening to dance music." While the court is somewhat more partial to the refined tempo of a waltz, it reluctantly admits that even the "muscle-tickling jazz" is entitled to constitutional protection.¹⁰

In cases of this sort, there are two lines of authority. There are decisions which hold invalid such ordinances which cover harmless acts, and which fail to make exceptions which might become necessary to avoid an oppressive effect.¹¹ Other courts, more magnanimously inclined, have tried to save such statutes by reading into them an interpretation conformable with the real spirit and intent.¹² But the meticulous care exercised by the city fathers in making the present ordinance all-inclusive leaves little room for the operation of the latter principle.¹³ Perhaps Mr. Justice Field's often-quoted statement that "all laws should receive a sensible construction"¹⁴ can be applied only to sensible laws.

H. A. B.

CORPORATIONS: LIABILITY OF DIRECTORS FOR ILLEGAL DIVISION OF CAPITAL—Section 309 of the California Civil Code prohibits the directors of a corporation from dividing or paying to stockholders any part of the capital stock,¹ and authorizes a recovery of the full amount of the capital stock so divided or paid out from the directors under whose administration such distribution has occurred.

¹⁰ Supra, n. 9, at p. 222, "It should be remembered that even in these days of bizarre extremes and freak abnormalities, the muscle-tickling jazz has not yet succeeded in excluding all sane dance music from the places where the devotees of Terpsichore are wont to foregather. And experts tell us that even jazz, like certain other things fast fading into oblivion, may be denatured—a consummation devoutly to be wished."

¹¹ Freund on the Police Power, § 158.

¹² Supra, n. 11.

¹³ Supra, n. 9, at p. 219, "To construe the ordinance as covering only public dance halls, and as covering only public dance halls or as inhibiting only boisterous dancing and loud and discordant music, would be but a mere arbitrary decision of this court, and, in effect, amount to a redraft of the ordinance to make it conform to what, in the view of the court, the city commissioners ought originally to have made it." For an ordinance which was upheld and which might serve as a model, should the city authorities desire to try again, see *Mehlos v. City of Milwaukee* (1914) 156 Wis. 591, 146 S. W. 882, Ann. Cas. 1915C 1102.

¹⁴ In *U. S. v. Kirby* (1868) 74 U. S. (7 Wall.) 482, 486, 19 L. Ed. 278: "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to oppressive injustice or an absurd consequence. It will therefore be presumed that the legislature intended exceptions from its language which would avoid results of this character."

¹ Capital stock has been construed to mean "capital assets" in *Martin v. Zellerbach* (1869) 38 Cal. 300, 309, 99 Am. Dec. 365, and many subsequent cases.